STATEMENT OF RICHARD CEBALLOS
BEFORE THE COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
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Good morning, Mr. Chairman and Members of the Committee. Thank you for inviting me to speak today.

Simply because I pass through the doors of my government employer, to serve the people of my county and my state, does not mean that I should be stripped of my rights as a citizen.

Unfortunately, that is exactly what has occurred to me with the recent decision of the Supreme Court of the United States in *Garcetti v. Ceballos*, No. 04-473 (S. Ct. May 30, 2006).

And while I was the one on the losing end of the Court's decision, I was not the only one who lost. Millions of other federal, state, and local government employees across this country also lost. They lost not only their right to protection against retaliation for disclosing instances of corruption, fraud, waste, and mismanagement that they observe in the course and scope of their employment. They also lost their rights to perform their jobs as citizens, who have a genuine interest in ensuring that their government agencies operate competently, fairly, and within the law.

In my case, I was subjected to adverse employment actions simply for doing my job.

As a deputy district attorney in Los Angeles, empowered to prosecute individuals who have been arrested and charged with criminal offenses, my job often times involves being a part of a process that deprives people of their freedom and sending them to jail or prison for a long time. Because of this power, I am constitutionally obligated to abide by specific rules of law, evidence, and ethics not demanded of other professions. My job is not simply to win a case or to secure a conviction. My job is to seek justice. My profession requires me to make sure that only legally obtained evidence is used to convict a person.

In the particular case before the Supreme Court, I discovered that several deputy sheriffs had fabricated evidence—evidence claimed to establish the "probable cause" necessary for the issuance of a search warrant. My discovery was confirmed by several of my colleagues in the district attorney's office. After conferring with them as well as my supervisors, I prepared a memorandum recommending that the case against these defendants be dismissed because of the constitutional violation. It should be noted that, at that time, I was a 12-year veteran of the Los Angeles County District Attorney's Office and had never made such a recommendation before. I also had a stellar record with the district attorney's office, with repeated "outstanding" performance evaluations by all my supervisors.

However, because the evidence was compelling that these police officers had indeed lied in order to obtain the search warrant, I felt that I was obligated—by the law, legal ethics rules, and by

morality—to make such a recommendation.

I was further motivated to take action by the then-developing "LAPD Rampart Corruption Scandal," in which several rogue Los Angeles police officers were accused of fabricating arrest reports, planting evidence, committing perjury in court, and, in one instance, shooting an unarmed man in the back and paralyzing him. Prior to this time, there was longstanding institutional pressure within the district attorney's office to refrain from questioning the veracity of police officers.

Following orders, I prepared a memorandum, documenting my investigation, legal analysis, opinions, and recommendations. This memorandum was channeled to my supervisors through the regular chain of command in accordance with office policies.

Initially, my memorandum and recommendations were met with approval by my supervisors. In fact, one of my supervisors even ordered the release of one of the defendants from custody pending final resolution of the case. A copy of my memorandum was forwarded to the Los Angeles County Sheriff's Department, which employed the police officers involved in this case. Shortly thereafter, the Sheriff's Department requested a meeting with me and my supervisors.

At this meeting, Sheriff's Department officials essentially branded me as a traitor, accusing me of "acting like a defense attorney or public defender." These officials demanded that my supervisors remove me from any further handling of the criminal case, and that the district attorney's office continue its prosecution of the defendants. The Sheriff's Department officials also noted that if the criminal case was dismissed as I had recommended, their agency would be subject to possible civil action by the defendants. Not wanting to risk alienating the Sheriff's Department, my supervisors agreed to the Sheriff's Department's demands and continued prosecuting the criminal case against the defendants.

My supervisors' change of heart in deciding to prosecute was made firm notwithstanding my protests that they were essentially engaging in prosecutorial misconduct for continuing to prosecute this case at the behest of the Sheriff's Department.

Soon thereafter, I begin to suffer several acts of adverse employment actions, ranging from a demotion or change in job assignment to a transfer in job locations, and, finally, to the loss of a promotion that I had earned.

Now, according to the Supreme Court, government employers are no longer constrained by the First Amendment's prohibition against punishing their employees for speaking out on matters of public concern. Government employers are essentially free to retaliate against an employee for reporting instances of corruption, fraud, waste, or mismanagement, as long as the disclosure was made pursuant to that employee's job duties. First Amendment protection will be afforded, if at all, only if the employee "goes public," such as by holding a public press conference, rather than through the employer's ordinary channels of communication, such as my use of the memorandum that I wrote to my superiors in the course of my job duties.

This ruling creates a predicament for government employees who in the future witness corruption, fraud, waste, or mismanagement in the workplace: either disclose their observations internally by following proper procedure and run the risk that their reports will be met by hostile and unsympathetic supervisors in which case they will not be protected by the First Amendment, or, alternatively, hold a press conference on the front steps of the government building and publicly embarrass government officials to assure themselves First Amendment protection. Being placed in this predicament is as illogical as it is bizarre.

Actually, employees will have another choice, one that public employees are more likely to follow than the two options above: Keep quiet and say nothing. Most employees will simply look the other way and feign ignorance of corruption, waste, fraud, or mismanagement that they witness in their workplace.

And, if this occurs, not only public employees will have lost. More importantly, the public will have lost. The people will have lost their right to know what is happening in their own government; their right to know what their elected and non-elected public officials are doing in government; their right to know if their taxpayer money is being spent properly or being wasted; and their right to know if their public officials are engaged in corrupt or fraudulent conduct.

This Supreme Court ruling fosters, even encourages, an atmosphere of secrecy in the halls of government that runs counter to our nation's open form of governance. It protects the corrupt, the lazy, and the incompetent and punishes the honest, the hardworking, and the diligent. And because it takes away protection for employees who speak as part of their job duties, and leaves that protection in place for other public employees, the Court's ruling means that only relative "know-nothings" will speak out, while those most likely to genuinely know about serious mismanagement or corruption—because they confront misconduct within the scope of their job duties—will keep quiet. It's hard to imagine a more perverse outcome.

Mr Chairman and Members of the Committee, I urge you to take a leadership role to amend the Whistleblower Protection Act ("WPA") of 1989, 5 U.S.C. 1213 et seq. Part II. B. of Justice David Souter's dissenting opinion in my case explains, without dispute from the Court majority, the WPA's many shortcomings. Foremost among them is the need to protect public employees who disclose instances of corruption, fraud, waste, or mismanagement where the disclosure is made in the course their job duties, which is currently unprotected by the WPA. *See Huffman v. Office of Personnel Management*, 263 F.3d 1341 (Fed. Cir. 2001). Your positive actions could also impel state and local governments to improve their whistleblower protections as well.

Thank you again for the opportunity to appear today. I stand ready to help the Committee in any way that I can, and I would be glad to answer any questions that you may have.

NB: The views and opinions expressed in my statement are made in my capacity as a citizen. They do not necessarily reflect the views and opinions of the Los Angeles County District Attorney's Office.